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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 2785 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy
of the judgement ? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil
Judge ? YES, TO ALL CRIMINAL COURTS AND
THE DIRECTOR, JUDICIAL ACADEMY, AHMEDABAD.

B. RAMESH & 3 Ors.

Versus

STATE OF GUJARAT

Appearance:

MR JR SHAH for Petitioners

MR UA TRIVEDI APP for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 08/01/97

ORAL JUDGEMENT

"What indeed is the first hand elementary duty of the learned Magistrate while taking cognizance of the offence under section 190 of the Criminal Procedure Code, 1973, before issuing process to the accused ? Is he supposed to be merely a post-box or post-office to have the rubber stamped order ready for issuing process to the accused moment the complaint is filed before him, as done in the instant case" ? OR is he required to apply his mind to the allegations made in complaint, examine them and further be quite careful and circumspect rather discreet before issuing the process unerringly bearing in mind the consequential physical, mental and financial hardship and inconvenience that may entail as a result of hasty and mechanical faulty issuance of the process/s against the accused ? This, in short, is the most material question arising for consideration in this Misc. Criminal Application because these days unfortunately it is found that in many such cases processes are issued just on mere asking, casually, mechanically, rather as a matter of routinal course, placing the innocent accused persons in given cases in most piquant situation unnecessarily disturbing their ordinary peaceful way and a vocation of normal life, which is if not actually taking away atleast interferes and disturbs his liberty. None indeed has any right to disturb other person's tranquillity without there being justification for the same. Mental peace of a citizen is as important as his other freedoms, including the physical liberty !! This is how the dignity of citizen is ordinarily required to be taken care of and respected !!

2. To narrate few relevant facts -According to the complainant Uttamchand M. Jain he is the partner of the Firm viz. M/s. Meghraj Kantilal at Ahmedabad dealing in cloth business. While B.Ramesh and three others are doing cloth business in the name and style of Messrs. B & T Enterprise at Madras. Some 12 months prior to the filing of the complaint, the accused approached him (no name is given) saying that his firm was a reputed firm and was doing a large scale cloth business at Madras. They had already come with cash amount and draft which were utilised while making purchase at Bombay and Surat. Accordingly, it was requested by the accused that they be supplied with the cloth on credit, assuring that the payment of which will be immediately made on reaching Madras. To inspire the confidence of the complainant, the accused gave names of 3-4 merchants of Ahmedabad and stated that he was regularly purchasing cloth from them and was keeping the word of regularly paying their bill amount. This is how, according to the complainant, he was tempted rather duped to sale the goods to him, and

accordingly he succumbed and sold the goods worth (i) Rs. 9,786-96 from his shop; (2) Rs. 12,383-90 of his sister concern - S.N. Enterprise; (3) Rs. 10,565-14 of M.K. Textiles; (4) Rs. 16,514-48 of Amitkumar & Company; (5) Rs. 8,404-61 of Vikram Textiles; (6) Rs. 12,655-90 of Mina Textiles; (7) Rs. 3,831-05 of Rahul Textiles. Thereafter, the complainant waited for sometime for the payment of the aforesaid outstanding amounts towards which the accused had purchased the goods, but that was of no consequence as no payment was made. As a result, the complainant went to Madras, where on inquiry, he came to know that the accused was a bogus merchant and that he has sold away the goods from him on the way encashing the same. Further according to the complainant, when he contacted the accused and demanded the money, he gave an evasive reply saying 'what money and for what..' at present he had no money and if in future if the payment was demanded, it would be difficult for him to get out of Madras, and that he will make the payment as and when he will have the money.' According to the complainant from the conduct of the accused, he has a reason to believe that the right from the beginning accused had an intention to cheat and that had indeed he been not tempted by creating false trust by the accused, under no circumstances the goods would have been sold to him. On the basis of these allegations, Uttamchand Jain- the respondent No.2 filed a complaint against the petitioner -B.Ramesh and three others for the alleged offences punishable under section 420 of IPC before the learned Metropolitan Magistrate, Ahmedabad, , wherein on the same being registered as Criminal Case No.5625/92, process came to be issued giving rise to the present petition for quashing the same.

3. When this matter was called out, Mr.J.R.Shah, the learned advocate for the petitioner was absent. The respondent No. 2 though served, has neither remained personally present nor through his learned advocate. It is under these circumstances that with the assistance of Mr. U.A. Trivedi, the learned APP this court has heard this petition and disposed of the same.

4. Now, the bare reading of the complaint ex-facie indicates as to how absurd, vague, improbable, and the malicious it is. May be one of the accused had purchased some cloth from the complainant and may be further also some amount was outstanding as unpaid towards the goods purchased. But it appears that the complainant with a view to pressurise and short-circuit the civil remedy has filed the complaint by joining two ladies viz. Sarlaben Ramesh and B. Jayalaxmi even alongwith one Jaychand Shah

also as accused persons. Through out the length and breadth of the complaint, there is not a whisper even of the allegations naming any of the accused and what role they played. Not only that but it is highly improbable that the complainant who is a businessman and that too of a city like Ahmedabad will ever so easily and unbelievably like a gullible child sell the cloth valued at thousands of rupee simply saying that he was tempted relying upon the words of the accused persons ! No businessman ordinarily unless he knows the dealing party and sure about his financial credentials will ever sell any goods risking payment of the same, and that too, of such a huge amount as stated above. To claim oneself as simple and guillible as an innocent child and also to do a 'business' in this world of cut-throat competition is something ordinarily an inherent contradiction and difficult to believe. The whole story as narrated in the complaint is cock and bull story wholly improbable, and accordingly incredible enough to inspire the confidence of anyone much less the court which has numerous occasions to deal with such types of complaints. Though the complainant has stated that the accused has purchased goods of various amounts, quite surprisingly, he has not referred either to any of the dates on which the bill was issued and/or the bill number !! It is on this general, vague, absurd and improbable version that the complainant has tried to dupe the learned Magistrate to issue the processes, laying a trap in which an unwary learned Magistrate unfortunately has fallen permitting the complainant to abuse the process of law placing four accused persons, out of whom two are ladies, into untold physical, mental and financial hardships and inconveniences !! Apparently, summoning all of them from such a long distance as Madras to attend the Court at Ahmedabad because the complainant had somehow named them as accused in the complaint, making too general and wild allegations of cheating against them is indeed too cruel and unpardonable act !! Can this be lightly done as done by the learned Magistrate in the instant case !! Under the circumstances, the most pertinent question that arises for consideration is - Are the learned Magistrates before whom the complaints of such a nature is filed are mere conduit pipe or say mere a post-offices to apply rubber stamp and mechanically issue the process against any innocent citizens to settle purely and exclusively disputes of the civil nature, to quench the thirst of personal vengeance of some scheming complainant short-circuiting the civil remedy ? The answer to this is obviously "NO". Then what indeed is the learned Magistrate required to do under the circumstances when the complaint is filed before him, because any mechanical

issuance of the process and that too sometimes to the persons hailing from long distances and different distant States entails too serious consequences many a time to quite innocent citizens. The answer is, it is the foremost duty of every responsible Magistrate when the complaint is presented before him to closely examine its entire contents from A to Z. Thereafter, the first question which the learned Magistrate should invariably ask unto himself is whether the complaint prima-facie discloses the offence ? or it is exclusively of the civil nature ??; secondly, in the complaint of such a nature whether a specific name/s of the accused and the role played by him/them is attributed ??; thirdly, whether the complaint is of such a vague, absurd, improbable, mischievous nature where the complainant throwing dust in the eyes of the court attempting, abusing the due process of law want to get it process issued against the accused persons, partly rightly and partly for illegally pressuring the real culprit by maliciously naming his friends and relatives in the complaint to ultimately strike the immediate and unfair deal which otherwise would take a considerable time if the suit is filed in the civil court, where ultimately many a time it is decreed with order of instalments only. These are some of the elementary points of duties for the consideration of the learned Magistrate before issuing the process. The reason is if the processes are mechanically issued on mere asking by the complainant, then it will not only unnecessarily put a person against whom the same are issued into great physical, mental and financial hardships and inconveniences but the same to some extent may further create havoc, affecting the image of administration of justice. It is here that the duty of the court is to see that the innocent members of the society are not mechanically, unnecessarily dragged into court and harassed by some scheming complainants abusing the process of the Court. For this purpose, as stated above, the learned Magistrates are supposed to carefully screen and examine the entire text of the complaint, evaluate the same finding out whether case is made out against the accused named in the complaint with a view to see that it does not stand befooled and the process got issued by him is not abused becoming the ready instrument of oppression and needless harassment to innocent citizens.

5. In the instant case, may be the accused has purchased some goods and amount is not paid. May be one of the accused is a party to the alleged business transaction. For that, undoubtedly, civil action in the civil court is open to him. But he can not be permitted

to use the criminal forum as a lever to knock out the outstanding dues from the other side when the case is exclusively of the civil nature and that too by taking in ban as hostages other innocent accused out of which two are ladies who had nothing to do with the alleged transaction, except being the family members or the friends and relatives as the case may be! It is altogether a different and distinct thing where facts alleged in the complaint are clear and transparent enough where it constitutes criminal offence against all accused named. That is to say if the facts alleged in the complaint are such on the basis of which remedies both either under the criminal law and civil law are open, it is open to the complainant to have resorted to either of the two or both remedies open to him. In other words, merely because the allegations made in the complaint are also of civil nature, that does not necessarily mean that the aggrieved person cannot file criminal complaint against the accused !! Here, that is not the case. In the opinion of this court, in the facts and circumstances of the case, it appears that the complainant has malaciously tried to abuse the criminal law and the process pursuant thereto to perhaps to make good his civil wrong. This can never be permitted. In this view of the matter, there is indeed no alternative left with this court, but to allow this petition and quash the processes issued against the petitioners.

6. With a view to prevent quite impermissible, nautiating, growing tendency of abusing the process of criminal court, where manifestly it does not lie, unnecessarily burdening the court's work delaying the disposal and justice to other genuine cases, it appears that the time has indeed come when the complainant must be asked to pay the costs and in a given case quite an exemplary cost in the first instance for wasting the most precious public time of the court and in the second instance harassing the other side by putting him/them into all sorts of physical, mental and financial hardships and inconveniences. Accordingly, this court feels that this is one of the fittest cases wherein the cost is required to be imposed on the complainant. This being the first case of the type to impose costs, having regard to the facts and circumstances of the case, the respondent No. 2 is directed to deposit Rs.2,500/= towards the costs. If this imposition of cost of Rs. 2,500/= will fail to deter other mischievious complainant abusing the process of law in future, Courts would be further constrained to come down quite heavily by imposing larger and larger amount of exemplary costs on such complainants.

7. In the result, this petition is allowed. The impugned order passed by the learned Magistrate issuing process is hereby quashed and set aside. Rule made absolute. The respondent No. 2 is directed to deposit Rs. 2,500/- towards costs before the learned Magistrate within 30 days from the date of receipt of this judgment, out of which Rs. 1,500/- will go to the Legal Aid funds of the District court, and Rs. 1,000/- will be paid to the petitioners. The learned Magistrate, on receipt of this judgment, is directed to immediately forward a copy of the same to the concerned parties, impressing upon the complainant that not to comply with this order will amount to contempt of the court. In the event of the respondent no.2 not depositing the cost amount within the stipulated time, the learned Magistrate shall inform this court about the same for taking appropriate actions against respondent no.2 under the Contempt of the Courts Act.

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